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DISCUSSION

A. Motion for Preliminary Injunction

Plaintiff has filed a motion for preliminary injunction , a supplement thereto, and a motion for emergency relief, which the Court construes as a motion for preliminary injunction. (Docket Nos. 15, 20 & 24.) “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008). This standard replaces the previous tests for preliminary injunctions that had been used in the Ninth Circuit. American Trucking Association v. Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). Plaintiff’s motions are DENIED because he has failed to show that he is likely to succeed on the merits. Having concluded that Plaintiff has failed to show a likelihood of success on the merits, this Court need not consider whether the plaintiff would suffer irreparable injury. See Guzman v. Shewry, 552F.3d 941, 948 (9th Cir. 2009).

B. Motion to File Amended Complaint

Plaintiff has filed a motion “that, the Complaint Filed in Case no. Cv-11-1507 and, all motions and declaration attendant upon that matter be transfered [*sic*] and hered [*sic*] in the instant matter.” (Docket No. 12.) In the alternative, Plaintiff requests that the Court permit him to amend his complaint after he has obtained the documents from Case No. 11-1507. The Court notes that Plaintiff has also filed a “motion to supplement” his complaint. (Docket No. 14.)

A plaintiff may amend the complaint once as a matter of course within 21 days after serving it. Fed. R. Civ. P. 15(a)(1)(A). But if the complaint requires a responsive pleading, a plaintiff may amend the complaint 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Id. at (a)(1)(B). In all other cases, a plaintiff must obtain the defendant’s consent or leave of court to amend a complaint. Id. at (a)(2).

1 In the interest of justice and in light of the fact that Defendants have yet to file a
 2 responsive pleading in this matter, the Court will grant Plaintiff an opportunity to file an
 3 amended complaint to include all the claims he wishes to raise in this instant action.
 4 Plaintiff is advised that he should also include all the claims in the amended complaint
 5 which he raises in supplemental briefs filed in this matter. (See e.g., Docket Nos. 14 and
 6 21.)

7 8 CONCLUSION

9 For the foregoing reasons, the Court orders as follows:

10 1. Plaintiff's motion to file an amended complaint is GRANTED. Plaintiff
 11 shall file an amended complaint **no later than thirty (30) days** from the date this order is
 12 filed. Plaintiff's motion to supplement his complaint, (Docket No. 14), is DENIED as
 13 moot.

14 The amended complaint must include the caption and civil case number used in
 15 this order and the words "AMENDED COMPLAINT" on the first page and write in the
 16 case number for this action, Case No. C 11-00287 EJD (PR). **Because an amended
 17 complaint completely replaces the original complaint and any supplements thereto,
 18 Plaintiff must include in it all the claims he wishes to present. See Ferdik v.
 19 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate
 20 material from the original complaint or any supplements thereto by reference.**

21 Briefing on the original complaint is hereby suspended until the Court conducts an
 22 initial review of the amended complaint.

23 2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
 24 Court informed of any change of address by filing a separate paper with the clerk headed
 25 "Notice of Change of Address." He must comply with the Court's orders in a timely
 26 fashion or ask for an extension of time to do so. Failure to comply may result in the
 27 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

28 The clerk shall enclose two copies of the court's form complaint, and a copy of the

1 Plaintiff's original complaint from Case No. 11-01507 JW (PR), (Docket No. 1), with a
2 copy of this order to Plaintiff.

3 This order terminates Docket Nos. 12, 14, 15, 20 and 24.

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5 DATED: June 8, 2011


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,

Plaintiff,

v.

FOX, et al.,

Defendants.

Case Number: CV11-00287 EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/10/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marcus R. Ellington E-44837
CSP-Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: 6/10/2010

Richard W. Wieking, Clerk
/s/ By: Elizabeth C. Garcia, Deputy Clerk